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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,787	06/27/2003	David D'Alessandro	2114.00001	6483

7590 06/17/2004

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EXAMINER

VU, STEPHEN A

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 06/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/607,787

Applicant(s)

D'ALESSANDRO, DAVID

Examiner

Stephen A Vu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-16 is/are allowed.
- 6) ☒ Claim(s) 1-8, 10 and 11 is/are rejected.
- 7) ☒ Claim(s) 9 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: See Continuation Sheet.

Continuation of Attachment(s) 6). Other: Appendix A- Fig. 1 of US # 5,950,259.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Boggs.

Boggs shows a lounge chair comprising a seat section (5), a back section (6), and means connecting the seat and back sections to allow pivoting the back section between sitting and reclining chair positions. The back section has opening means (7) for the placement of the face of a user and closure means (12) to cover the opening means (7) (see Appendix A).

With claim 2, the closure mean has a flap connected to the back section.

With claim 10, a foot rest section (4) and means connecting the foot rest section and seat section to allow pivoting of the foot rest section (4).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boggs in view of Yoder.

Boggs discloses the claimed invention except for having pad means pivotally attached around sides of the opening means.

Yoder teaches a lounge chair with pad means pivotally attached around sides of an opening for comfortably supporting a user's face at an elevated height. The pad means is attached by Velcro to the top surface of the back rest, which enables a user to remove or attach the pad means to the back rest by pivotal movement on one side. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide pad means of Yoder's invention pivotally attached around the sides of the opening means of Bogg's invention, in order to provide a cushion means to comfortably support a user's face.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Boggs in view of Lindsey et al.

Boggs discloses the claimed invention except for the back section to have expanded side portions. Lindsey et al teach a lounge chair comprising arm side

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portions (64) attached to the back portion (44) for supporting the arms of the user. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide arm side portions of Lindsey et al's invention to the back section of Boggs' invention in order to allow a user to stretch out one's arms in a face down lying position.

Allowable Subject Matter

Claims 9 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 13-16 are allowed. Claim 13 is deemed allowable, because the prior art does not disclose a means to attach the flap to the bottom surface to cover the opening in a first state and to leave the opening uncovered in a secondary state while the flap is also attached to the bottom surface.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Robillard et al, Umbrianna, Day et al, Mariani et al, and Childers are cited as showing similar types of lounge chair.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen A Vu whose telephone number is 703-308-1378. The examiner can normally be reached on M-F from 8:30 am to 5:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M Cuomo can be reached on 703-308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Stephen Vu
June 14, 2004

APPENDIX A

U.S. Patent

Sep. 14, 1999

Sheet 1 of 6

5,950,259

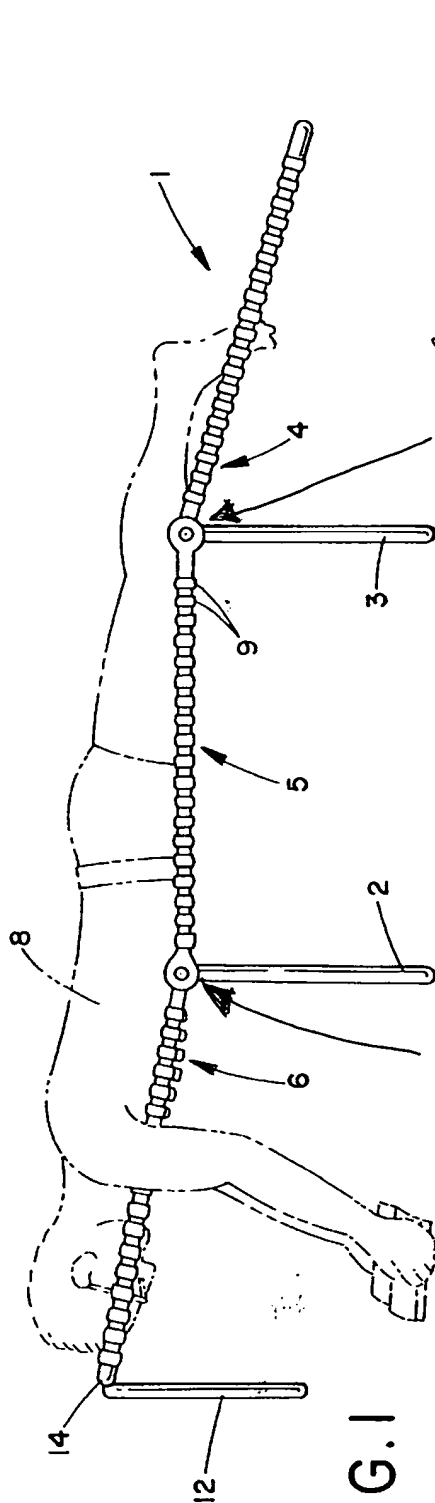


FIG. 1

MEANS
TO ALLOW PIVOTING
4 OF THE FOOT
REST
SECTION

means
to allow pivoting
5 back section

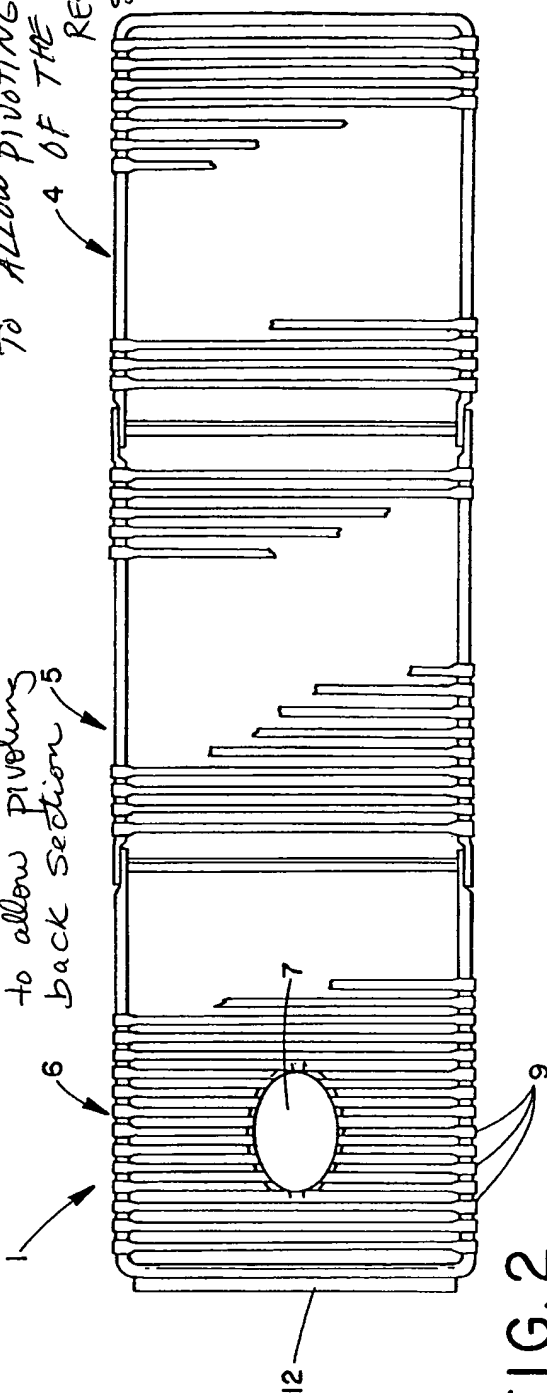


FIG. 2